

**STATE OF MICHIGAN**  
**BEFORE THE JUDICIAL TENURE COMMISSION**

**COMPLAINT AGAINST:**

**HON. MARY BARGLIND**  
**Judge, 41<sup>st</sup> Circuit Court**  
**Iron Mountain, MI 49801**

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**FORMAL COMPLAINT NO. 83**

**DECISION AND RECOMMENDATION OF DISCIPLINE**

At a session of the Michigan Judicial  
Tenure Commission held on July 14,  
2008, in the City of Detroit

**PRESENT:**

Hon. Barry M. Grant, Chairperson  
Hon. Kathleen J. McCann, Vice Chairperson  
Thomas J. Ryan, Esq., Secretary  
Hon. Jeanne Stempien  
Hon. Michael J. Talbot  
Nancy J. Diehl, Esq.  
Ronald F. Rose  
Hon. Nanci J. Grant  
Marja M. Winters

**I. Introduction**

The Judicial Tenure Commission of the State of Michigan ("Commission") files this recommendation for discipline against Hon. Mary Barglind ("Respondent"), who at all material times was a judge of the 41<sup>st</sup> Circuit Court.

This action is taken pursuant to the authority of the Commission under Article 6, § 30 of the Michigan Constitution of 1963, as amended, and MCR 9.203.

On February 12, 2008, the Commission issued Formal Complaint No. 83 against Respondent. On March 14, 2008, Respondent filed her answer to the formal complaint.

In lieu of proceeding with the formal hearing, the Examiner and Respondent entered into a Settlement Agreement, a copy of which is appended to this Decision and Recommendation as Attachment 1. Based on Respondent's stipulation to certain facts and her consent to this recommendation, the Commission concludes that Respondent engaged in misconduct contrary to the Michigan Code of Judicial Conduct. The Commission recommends that the Supreme Court publicly censure Respondent and suspend her from exercising her judicial duties for a period of thirty (30) days without pay.

## **II. Findings of Fact**

The Commission adopts the Stipulated Facts contained in the Settlement Agreement and incorporates them here:

1. Respondent at all relevant times was a judge of the 41<sup>st</sup> Circuit Court, Dickinson, Menominee, and Iron Counties, Michigan.

## COUNT I- DELAY

### ***A. Knight Owl v Michigan Liquor Control Commission, Dickinson County Case No. 03-13070-AA***

2. During all relevant periods, Respondent was the judge assigned to *Knight Owl v Michigan Liquor Control Commission, Dickinson County Case No. 03-13070-AA*.

3. *Knight Owl* involved an appeal of an administrative agency decision fining the appellant \$1,000, or in the alternative imposing a 50-day suspension of the liquor license at issue, based on charges of serving liquor to an intoxicated person.

4. The appellee filed a motion on February 5, 2004, requesting dismissal of the appeal. Respondent presided over a hearing on March 3, 2004, and took the matter under advisement.

5. Respondent issued a decision in the case on October 25, 2006.

6. There was no justifiable reason for the delay.

### ***B. Beaulier v Ford Motor, et al, Dickinson County Case No. 04-13306-CE***

7. During all relevant periods, Respondent was the judge assigned to *Beaulier v Ford Motor, et al, Dickinson County Case No. 04-13306-CE*.

8. *Beaulier* involves allegations that defendants caused environmental contamination of property owned by the plaintiffs.

9. The defendants filed a motion for summary disposition in September 2004, asserting that the statute of limitations had expired.

10. In their brief submitted to Respondent, the defendants referenced an independent lawsuit, *Beauchamp, et al v Ford Motor, et al*, Dickinson County Case No. 02-012608-CE, which was brought by the same attorney and involved some similar claims against the same defendants.

11. In *Beauchamp*, another judge dismissed the case based on an expiration of the statute of limitations.

12. In July 2005, the defendants amended their brief to note that the dismissal in *Beauchamp* had been affirmed on appeal. The brief did not raise new facts or legal arguments other than those already previously presented to Respondent. The Michigan Supreme Court denied leave to appeal in *Beauchamp* on March 22, 2006. 474 Mich 1085 (2006).

13. Respondent held a hearing on the motion in August 2005.

14. Respondent rendered a decision on January 28, 2008.

***C. Mason v City of Menominee, Menominee County Case No. 02-010066-CH***

15. During all relevant periods, Respondent was the judge assigned to *Mason v City of Menominee, Menominee County Case No. 02-010066-CH*.

16. In general, *Mason* involved a quiet title claim by a resident who lives next to a Menominee city park, based on confusion as to the property line between the parcels of property.

17. Respondent completed a two-day bench trial in the case on May 16, 2003, and took the matter under advisement.

18. Respondent rendered her decision on April 29, 2005.

19. The decision was appealed, and on September 12, 2006, the Michigan Court of Appeals reversed the matter as it determined Respondent erred in applying the abandonment theory to the case. *Mason v City of Menominee*, (Court of Appeals Docket No. 262743, unpublished decision released September 12, 2006)

20. The Court of Appeals remanded the matter for Respondent to resolve the remaining undecided legal issues.

21. Respondent held a status conference on December 4, 2006, and established a briefing schedule with the last filing due on March 19, 2007.

22. Respondent issued her decision on December 12, 2007.

***D. Grosso v Carlson, Dickinson County Case No. 03-013085-CH***

23. During all relevant periods, Respondent was the judge assigned to *Grosso v Carlson, Dickinson County Case No. 03-013085-CH*.

24. *Grosso* was a quiet title action involving legal theories based on acquiescence and adverse possession, concerning a disputed property line between two parcels.

25. Respondent conducted a three-day bench trial that concluded on November 18, 2004, at which time Respondent took the matter under advisement.

26. Respondent rendered her decision on October 30, 2006.

27. There was no justifiable reason for the delay.

***E. Normand v Normand, Dickinson County Case No. 06-14228-DO***

28. During all relevant periods, Respondent was the judge assigned to *Normand v Normand, Dickinson County Case No. 06-14228-DO*.

29. *Normand* was a divorce proceeding where the parties had no minor children, both litigants were working, and it did not involve a request for attorney fees.

30. Respondent conducted a bench trial in the matter on September 29, 2006 and October 19, 2006.

31. The parties *sua sponte* filed supplemental briefs on March 1, 2007 and October 11, 2007.

32. In March 2007 via telephone, Respondent represented to counsel that she knew the decision had not been completed and that she was “finalizing” it.

33. Respondent issued her decision on December 20, 2007.

***F. Rasmussen v Rasmussen, Menominee County Case No. 02-010369-DO***

34. During all relevant periods, Respondent was the judge assigned to *Rasmussen v Rasmussen, Menominee County Case No. 02-010369-DO*.

35. *Rasmussen* involved a divorce after a 20-year marriage, with no minor children.

36. The primary asset at issue was the husband's dairy farm, which provided a livelihood for both parties throughout their marriage.

37. Respondent conducted a bench trial on November 13 and 19, 2003.

38. Respondent made a representation (as reflected by the Case Register of Actions) that Respondent would render a decision "on November 26, 2003."

39. Respondent rendered an opinion on August 24, 2004.

40. There was no justifiable reason for the delay.

***G. M & M Splicers v Malone, Menominee County Case No. 03-010477-CZ***

41. During all relevant periods, Respondent was the judge assigned to *M & M Splicers v Malone, Menominee County Case No. 03-010477-CZ*.

42. In general, *M & M Splicers* involved a business dispute between two brothers who were owners of the company, over funds used to purchase equipment for the business.

43. Respondent conducted a half-day bench trial on August 30, 2004.

44. Respondent rendered her decision on May 4, 2005, which was eight months after she took the case under advisement.

45. There was no justifiable reason for the delay.

***H. Theisen v City of Iron Mountain, Dickinson County Case No. 05-014075-CK***

46. During all relevant periods, Respondent was the judge assigned to *Theisen v City of Iron Mountain, Dickinson County Case No. 05-014075-CK*.

47. *Theisen* involved a claim by Iron Mountain's retired fire chief against the city, to compel the city to add his new wife to the retirees' health insurance plan.

48. The parties agreed that the facts were not in dispute (except for possible damages), so they submitted the matter to Respondent based on a motion for partial summary disposition.

49. Respondent conducted the hearing on September 5, 2006, at which time the judge took the matter under advisement.

50. Respondent issued an opinion and order on April 27, 2007, which was 7-1/2 months after she took it under advisement.

51. There was no justifiable reason for the delay.

***I. Becker v Havelka, Menominee County Case No. 03-010603-NZ***

52. During all relevant periods, Respondent was the judge assigned to *Becker v Havelka, Menominee County Case No. 03-010603-NZ*.

53. In general, *Becker* involved plaintiff's sale of property and a building to defendant in 1999, with plaintiff continuing to lease space in the building.

54. In 2001, a fire destroyed the building, but the insurance did not cover plaintiff's loss of personal property. He sued defendant regarding, among other issues, the "fire issue."

55. The defendant later filed a counterclaim, based on a dispute over ownership of adjacent property (the "real estate issue").

56. The defendant filed a motion for summary disposition in mid-2006 on his counter-claim (on the real estate issue), and plaintiff filed a counter-motion.

57. Respondent held a hearing on the summary disposition motions on December 15, 2006. On that same day, one of the parties filed a 40-page brief. Respondent took the matter under advisement.

58. At the hearing, Respondent represented that a decision would be issued between December 18 and 20, 2006.

59. Respondent rendered an opinion on April 12, 2007.

60. Plaintiffs later filed two motions for summary disposition regarding the “damage” counts of the counter-claim, based on fraud and slander of title.

61. Respondent conducted the motion hearing on October 4, 2007, and again made a representation as to when her decision would be rendered, which was “within two weeks.”

62. Respondent knew as of November 12, 2007 that the case evaluation was scheduled for December 18, 2007.

63. Respondent rendered her decision on December 13, 2007.

***J. Deyaert v Deyaert, Dickinson County Case No. 06-14482-DO***

64. During all relevant periods, Respondent was the judge assigned to *Deyaert v Deyaert, Dickinson County Case No. 06-14482-DO*.

65. *Deyaert* was a divorce proceeding that did not involve children, and concerned a marriage that lasted six years.

66. The matters in dispute centered on property issues.

67. Respondent conducted a two-day trial that was completed on June 26, 2007, and took the matter under advisement.

68. Respondent represented to the parties and counsel that Respondent would render a decision by July 20, 2007.

69. Respondent did not issue her decision until September 20, 2007, which was three months after the bench trial.



***K. Dickinson County Landlord Association v City of Iron Mountain, Dickinson County Case No. 06-14205-CZ***

70. During all relevant periods, Respondent was the judge assigned to *Dickinson County Landlord Association v City of Iron Mountain, Dickinson County Case No. 06-14205-CZ*.

71. *Dickinson County Landlord Association* concerned plaintiff's constitutional challenges to a new 50-page landlord/tenant ordinance adopted by the City of Iron Mountain.

72. The parties agreed that there were no factual disputes, and submitted the matter to Respondent via motion for summary disposition.

73. Respondent conducted a hearing on the motion for summary disposition on February 7, 2007.

74. Respondent decided most of the issues in dispute from the bench at the hearing.

75. However, she took certain matters under advisement with a representation that Respondent would complete her decision on February 21, 2007. The undecided matters resolved an identification of the portions of the ordinance that were constitutionally vague.

76. Respondent did not identify the provisions on that date, but instead represented Respondent would provide a list of unconstitutional provisions on February 23.

77. Respondent failed to provide the list of vague provisions until May 17, 2007, which was three and a half months after the date of the hearing.

***L. Herson v Herson, Menominee County Case No. 97-008231-DM***

78. During all relevant periods, Respondent was the judge assigned to *Herson v Herson, Menominee County Case No. 97-008231-DM*.

79. *Herson* involved a post-judgment motion regarding change of custody, which was filed on June 26, 2006.

80. The matter required prompt attention as her decision would determine where the children attended school in the fall.

81. Respondent entered a Stipulation and Order regarding temporary custody of the older daughter.

82. Respondent conducted a hearing on the motion on August 18, 2006, and represented that Respondent would render a decision "in the next few days" (as reflected by a notation in the Case Register of Actions).

83. Respondent rendered a decision on September 29, 2006.

84. Her decision changed custody as to one child, who continued to reside with the father and attend school in the Menominee system, while the other remained in Wisconsin with the mother, and therefore attended school in that state.

## **COUNT II – COOPERATION AND COMPLIANCE WITH SCAO**

### ***A. Failure to respond to SCAO inquiries***

#### ***1. Knight Owl v Michigan Liquor Control Commission, Dickinson County Case No. 03-13070-AA***

85. As noted in paragraph 3 above, *Knight Owl v Michigan Liquor Control Commission, Dickinson County Case No. 03-13070-AA*, involved an appeal of an administrative agency decision fining the appellant \$1,000, or in the alternative imposing a 50-day suspension of the liquor license at issue, based on charges of serving liquor to an intoxicated person.

86. The appellee filed a motion on February 5, 2004, requesting dismissal of the appeal. Respondent presided over a hearing on March 3, 2004, and took the matter under advisement.

87. James Covault, Director of SCAO Region IV, wrote Respondent on July 12, 2006, to inquire as to the status of the matter<sup>1</sup>, but Respondent did not reply.

88. On July 27 Mr. Covault wrote to Respondent again and asked for a response by August 4, but Respondent did not reply.

89. Mr. Covault called Respondent on August 9, 2006, regarding the matter.

90. He called again on October 19, 2006 after the case appeared as pending on Respondent's Delay in Matters Submitted to Judge report.

**2. *Grosso v Carlson, Dickinson County Case No. 03-013085-CH***

91. As noted in paragraph 24 above, *Grosso v Carlson, Dickinson County Case No. 03-013085-CH*, was a quiet title action involving legal theories based on acquiescence and adverse possession, concerning a disputed property line between two parcels.

92. Respondent conducted a three-day bench trial that concluded on November 18, 2004, at which Respondent took the matter under advisement.

93. Mr. Covault contacted her in June 2006 as matter was listed as pending on her Delay in Matters Submitted to Judge report, when it was not on previous reports.

94. Respondent reported to Mr. Covault that the decision would be rendered in a few days.

95. On July 12 and July 27, 2006 Mr. Covault wrote Respondent regarding the matter, but Respondent failed to reply to either letter.

96. Mr. Covault called Respondent on August 9 and left a message asking that Respondent contact him about the case.

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<sup>1</sup> Mr. Covault erroneously noted that Respondent took the case under advisement during that month, based on a notation in the Case Register of Actions stating: "waiting for Judge's opinion." Respondent actually took it under advisement in March 2004.

97. Mr. Covault saw her at a judicial conference on August 31, 2006, and in response to an inquiry about the matter, Respondent represented to him that the decision would be issued the next day.

98. Respondent identified the case as pending on her next Delay in Matters Submitted to Judge report, filed on October 16, 2006.

99. Mr. Covault called her office again on October 19, 2006.

***3. Lucier v LaFave, Menominee County Case No. 05-011480-CH***

100. *Lucier v LaFave, Menominee County Case No. 05-011480-CH*, involved a dispute concerning a parcel of property containing three family homes, including the interpretation of a will and deed, the statute of frauds, and the parole evidence rule.

101. Respondent conducted a bench trial on May 17 and 25, 2006.

102. After nine months of post-judgment proceedings, Respondent conducted a hearing on February 23, 2007, where she represented that she would issue a decision on all outstanding matters by February 28, 2007.

103. Mr. Covault wrote Respondent inquiring about the status of this case.

104. Although Mr. Covault did not specifically request a response, the letter was clear that he expected her to either explain the delay or render a decision, and Respondent did neither.

105. On March 13, 2007 Mr. Covault wrote to Respondent again and inquired as to the reason for the delay, offered his assistance, and asked when the decision would be issued. Respondent did not reply.

***4. Becker v Havelka, Menominee County Case No. 03-010603-NZ***

106. *Becker v Havelka, Menominee County Case No. 03-010603-NZ*, involves plaintiff's sale of property and a building to

defendant in 1999, with plaintiff continuing to lease space in the building.

107. A 2001 fire in the building led to the plaintiff's suit against the defendant, after which the defendant later filed a counterclaim based on a real estate dispute relating to the property.

108. Respondent held a hearing on summary disposition motions based on the real estate issue only on December 15, 2006, at which Respondent took the matter under advisement.

109. At the hearing she represented that a decision would be issued between December 18 and 20, 2006 (as reflected by the Case Register of Actions).

110. On March 1, 2007, Mr. Covault wrote Respondent inquiring about the status of this case.

111. Although Mr. Covault did not specifically request a response, the letter was clear that he expected her to either explain the delay or render a decision, and Respondent did neither.

112. On March 13, 2007, Mr. Covault wrote to her again and inquired as to the reason for the delay, offered his assistance, and asked when the decision would be issued. Respondent did not reply.

***5. Backus v Holmes (Backus), Dickinson County Case No. 05-013602-DM***

113. *Backus v Holmes (Backus), Dickinson County Case No. 05-013602-DM*, involved post-judgment issues, including the mother's failure to take the couple's children to Jehovah's Witness meeting, pursuant to an agreement in the Judgment of Divorce.

114. Respondent conducted a hearing on September 26, 2006, on the motion, where Respondent represented that Respondent would render decision at a hearing on October 6, 2006.

115. Respondent later cancelled the October 6 hearing and advised counsel that an opinion would be rendered in writing.

116. Mr. Covault placed calls to her on December 18 and 19, 2006, regarding the status of her decision.

117. Mr. Covault wrote to her on December 20, asking for a response by December 29, 2006, as to the status of the matter.

118. Respondent did not reply by December 29, 2006.

119. Respondent subsequently returned a copy of Mr. Covault's letter to him in mid-January 2007, with a hand-written note that the decision was issued on January 5, 2007.

120. Mr. Covault has no record of any phone calls from the Respondent in the matters listed in Paragraphs 85 – 119, and Respondent has no recollection of discussing them with him.

***B. Failure to identify pending cases pursuant to MCR 8.107***

121. For all relevant periods prior to January 1, 2006, MCR 8.107 required trial courts to file a "Statement of Matters Undecided" with SCAO, on the first business day of January, May, and September each year.

122. That court rule required Respondent to report all matters which remained undecided for more than four months from the date submitted to Respondent (as reflected by the last argument made or the expiration of the time for filing the last brief).

123. Respondent failed to list *Rasmussen v Rasmussen*, Menominee County Case No. 02-010369-DO on her "Statement of Matters Undecided" report filed in May 2004.

124. Respondent failed to list *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, and *Mason v City of Menominee*, Menominee County Case No. 02-010066-CH on her "Statement of Matters Undecided" report filed in September 2004.

125. Respondent failed to list *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, and *Mason v City of Menominee*, Menominee County Case No. 02-010066-CH on her "Statement of Matters Undecided" report filed in January 2005.

126. Respondent failed to list *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, *M & M Splicers v Malone*, Menominee County Case No. 03-010477, and *Grosso v Carlson*, Dickinson County Case No. 03-013085-CH on her “Statement of Matters Undecided” report filed in May 2005.

127. Respondent failed to list *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, and *Bublani v Bublani*, Dickinson County Case No. 02-12458-DM on her “Statement of Matters Undecided” report filed in September 2005.

128. Respondent failed to list *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, *Grosso v Carlson*, Dickinson County Case No. 03-013085-CH, and *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE on her “Statement of Matters Undecided” report filed in January 2006.

129. An amendment to MCR 8.107, which took effect on January 1, 2006, required trial courts to file a “Delay in Matters Submitted to Judge” report on the first business day of January, April, July, and October.

130. The court rule requires trial courts to provide information on all matters pending during the period that were not decided within 56 days from submission (as reflected by the last argument made or the expiration of the time for filing the last brief or production of transcripts).

131. On her “Delay in Matters Submitted to Judge” report filed for the first quarter of 2006, Respondent failed to identify *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA, *Grosso v Carlson*, Dickinson County Case No. 03-013085-CH, and *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE.

132. On her “Delay in Matters Submitted to Judge” report filed for the second quarter of 2006, Respondent failed to identify *Knight Owl v Michigan Liquor Control Commission*, Dickinson County Case No. 03-13070-AA and *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE.

133. On her “Delay in Matters Submitted to Judge” report filed for the third quarter of 2006, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE.

134. On her “Delay in Matters Submitted to Judge” report filed for the fourth quarter of 2006, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE, *Theisen v City of Iron Mountain*, Dickinson County Case No. 05-014075-CK, *Normand v Normand*, Dickinson County Case No. 06-14228-DO, and *Backus v Holmes (Backus)*, Dickinson County Case No. 05-013602-DM.

135. On her “Delay in Matters Submitted to Judge” report filed for the first quarter of 2007, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE, *Normand v Normand*, Dickinson County Case No. 06-14228-DO, and *Backus v Holmes (Backus)*, Dickinson County Case No. 05-013602-DM.

136. On her “Delay in Matters Submitted to Judge” report filed for the second quarter of 2007, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE and *Normand v Normand*, Dickinson County Case No. 06-14228-DO.

137. On her “Delay in Matters Submitted to Judge” report filed for the third quarter of 2007, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE and *Normand v Normand*, Dickinson County Case No. 06-14228-DO.

138. On her “Delay in Matters Submitted to Judge” report filed for the fourth quarter of 2007, Respondent failed to identify *Beaulier v Ford Motor, et al*, Dickinson County Case No. 04-13306-CE.

### ***C. Implementation Plan of January 2007***

139. In January 2007, Respondent agreed to undertake various actions, both in her role as the Chief Judge and as a 41<sup>st</sup> Circuit Court Judge, to “assist in the timely processing and adjudication of cases



and to ensure that data entered into the Judicial Information System (JIS) is timely and accurate.”

140. The document, which was prepared at the request of SCAO, is commonly referred to as the “Implementation Plan.”

141. Respondent admits that not all undecided matters that should have been reported to SCAO on her Delay in Matters Submitted to Judge were, in fact, reported, contrary to Paragraph 5 of the Implementation Plan.

142. Respondent does not contest the requirements set forth in Implementation Plan.

### **III. Standard of Proof**

The standard of proof applicable in judicial disciplinary matters is the preponderance of the evidence standard. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998). The standard of proof is not of critical importance because the party’s stipulation has conclusively established the relevant facts.

### **IV. Conclusions of Law**

The facts asserted in the Formal Complaint and established by the parties’ stipulation in this matter show, by a preponderance of the evidence, that Respondent breached the standards of judicial conduct and is responsible for all of the following, as alleged in the Formal Complaint:

- Misconduct in office as defined by the Michigan Constitution of 1963, as amended Article VI, § 30 and MCR 9.205;
- Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, § 30 and MCR 9.205;

- Persistent neglect in the performance of judicial duties, in violation of MCR 9.205(B)(1)(b);
- Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, and to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to the Michigan Code of Judicial Conduct (MCJC), Canon 1;
- Irresponsible conduct which erodes public confidence in the judiciary, in violation of MCJC, Cannon 2A;
- Failure to respect and observe the law and so conduct herself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary contrary to MCJC, Canon 2B;
- Failure to promptly dispose of the business of the court, contrary to MCJC, Canon 3A(5) (Count I only);
- Failure to diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitation the performance of the administrative responsibilities of other judges and court officials, contrary to MCJC, Canon 3B(1) (Count II only); and
- Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2).

The standards of judicial conduct make clear that an important component of justice is the prompt dispatch of judicial duties. Through her unjustified delay and failure to cooperate with SCAO, Respondent has failed in these responsibilities.

## **V. Disciplinary Analysis**

Pursuant to MCR 9.220(C), Respondent and the Commission have agreed that public censure plus suspension, without pay, for a period of thirty (30) days, to

commence not before September 1, 2008, is the appropriate discipline to be imposed in this case. (Settlement Agreement, ¶¶ 143-144).

A. The *Brown* Factors

The Michigan Supreme Court set forth the criteria for assessing proposed discipline in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999). A discussion of the relevant factors follows.

- (1) ***Misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct.***

The stipulated facts reveal evidence of a pattern of misconduct in this case.

- (2) ***Misconduct on the bench is usually more serious than the same misconduct off the bench.***

The stipulated facts reveal evidence of misconduct on the bench.

- (3) ***Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety.***

The stipulated facts reveal evidence of misconduct that is prejudicial to the actual administration of justice, one component of which is the prompt dispatch of judicial duties.

- (4) ***Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does.***

Because Respondent's misconduct was actually prejudicial to the administration of justice, as noted above, this factor is duplicative of factor (3).

- (5) *Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated.*

The stipulated facts do not reveal evidence of premeditated or deliberate delay. Respondent's misconduct was more in the nature of neglect.

- (6) *Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery.*

One of the reasons that delay in the administration of justice is to be avoided is because delay tends to undermine the ability of the justice system to discover the truth of what occurred in a legal controversy. Although there is no evidence that Respondent's delay actually precluded the justice system from discovering the truth in any particular case, the stipulated facts reveal evidence of misconduct that, as a general matter, undermines the ability of the justice system to discover the truth.

- (7) *Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.*

The stipulated facts reveal no evidence of conduct involving the unequal application of justice on the basis of a class of citizenship.

B. Proportionality

In determining an appropriate discipline in this matter, the Commission is mindful of the Michigan Supreme Court's call for "proportionality" based on comparable conduct. Based on the stipulated facts, the Commission, in its collective judgment, believes that a public censure and suspension without pay for a period of thirty (30) days would be an appropriate and proportional discipline for Respondent's judicial misconduct. In reaching this conclusion we are mindful of the fact that the parties have reached an express agreement as to the propriety of the sanction.

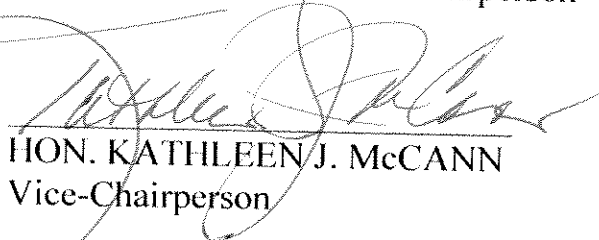
**VI. Recommendation**

The Commission concludes that Respondent committed judicial misconduct. Based on the nature of the misconduct, the Commission recommends that the Michigan Supreme Court publicly censure Respondent and suspend her from exercising her judicial duties for a period of thirty (30) days without pay, commencing no earlier than September 1, 2008. If this Court accepts the Commission's recommendation, it is also recommended that the Court enter an order releasing the master from any further responsibilities in this matter.

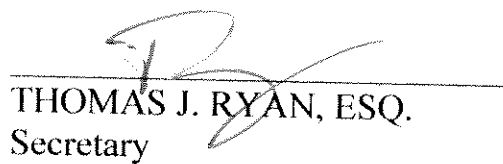
# JUDICIAL TENURE COMMISSION



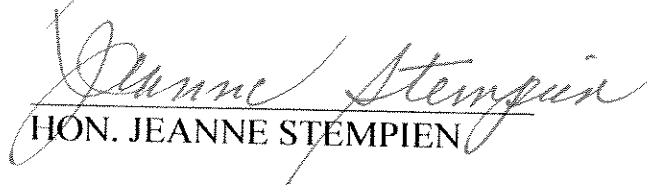
HON. BARRY M. GRANT  
Chairperson



HON. KATHLEEN J. McCANN  
Vice-Chairperson



THOMAS J. RYAN, ESQ.  
Secretary



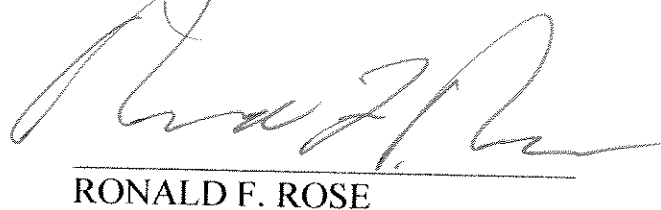
HON. JEANNE STEMPIEN



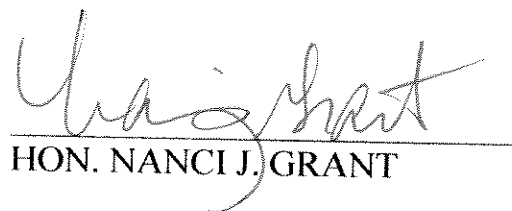
HON. MICHAEL J. TALBOT



NANCY J. DIEHL, ESQ.



RONALD F. ROSE



HON. Nanci J. GRANT



MARJAM M. WINTERS